

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTHONY P. BOTTZECK, et al.,

Plaintiffs,

vs.

LAS VEGAS METROPOLITAN POLICE DEPT.,
et al.,

Defendants.

Case No. 2:10-cv-01093-RLH-PAL

ORDER

(IFP App - Dkt. #14)

This matter is before the court on Plaintiff's Letter Request (Dkt. #14) that was docketed as a Motion/Application for Leave to Proceed *In Forma Pauperis* filed March 9, 2011. As noted by the District Judge in his Order Granting Plaintiff's Request to Reopen (Dkt. #13) this case has a convoluted procedural history. Plaintiff's first Application to Proceed *In Forma Pauperis* did not indicate that Peter Bottzeck and Astrid Mangubat are husband and wife, nor did it state that Anthony Bottzeck was their minor son. As a result, the court could not determine whether Plaintiffs qualified to proceed *in forma pauperis*. Plaintiffs' Second Application (Dkt. #4) was only filed by Anthony Bottzeck. As a result, the undersigned recommended to the District Judge that Plaintiff's Application to Proceed *In Forma Pauperis* be denied, and the Complaint dismissed, unless the Plaintiffs filed separate Applications to Proceed *In Forma Pauperis* with signed financial certificates on or before December 21, 2010.

The District Judge entered an Order (Dkt. #5) accepting and adopting the undersigned's Report of Finding and Recommendation (Dkt. #5). Thereafter, Plaintiff filed a Motion to Reopen the Case (Dkt. #13). In his Order granting the Motion to Reopen (Dkt. #13), the District Judge noted the deficiencies in Plaintiff's various Applications. He also pointed out that Plaintiff's Complaint did not

1 state any claim on behalf of Anthony Bottzeck. Additionally, the Order noted that Anthony Bottzeck
2 cannot represent himself as a minor, and advised Plaintiffs that someone must apply to appear on
3 Anthony Bottzeck's behalf as a guardian *ad litem*. Therefore, the District Judge ordered each Plaintiff
4 to file a new and separate Application to Proceed *In Forma Pauperis*; and file an Amended Complaint
5 that either removes Anthony Bottzeck as a Plaintiff or states a claim on his behalf. *See* Order (Dkt.
6 #13) at 2-3.

7 On March 9, 2011, Plaintiff Peter Bottzeck filed a document, which the Clerk of Court docketed
8 as a Motion/Application to Proceed *In Forma Pauperis* (Dkt. #14). Although Plaintiff's filing
9 references his family's financial condition and states the reason for naming his minor son in the
10 complaint, it does not comply with the District Judge's Order (Dkt. #13). Plaintiffs must each file
11 separate Applications to Proceed *In Forma Pauperis*. The Plaintiffs must fill out the form providing
12 the information requested under oath on the court's Application to Proceed *In Forma Pauperis* which
13 contains signed financial certificates for each Plaintiff.

14 If the Plaintiff parents wish to pursue a claim on behalf of their minor son, Anthony Bottzeck,
15 the Amended Complaint must state the nature of his claims, as well as Plaintiffs Peter Bottzeck's and
16 Astrid Mangubat's claims. The Court cannot refer to a prior pleading (i.e., Plaintiffs' original
17 Complaint) or information provided in letters addressed to the court or the clerk. Rather, the amended
18 complaint must be complete in itself and state all claims for relief Plaintiffs are requesting. This is
19 because, as a general rule, an amended complaint supersedes the original complaint. *See Loux v. Rhay*,
20 375 F.2d 55, 57 (9th Cir. 1967). Local Rule 15-1 requires that an amended complaint be complete in
21 itself without reference to any prior pleading. Once a plaintiff files an amended complaint, the original
22 complaint no longer serves any function in the case. Therefore, in an amended complaint, as in an
23 original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

24 Finally, Plaintiffs are advised that letters addressed to the court are not appropriate means to
25 request relief from the court. A motion, supported by the reasons for the request and any laws
26 supporting the request should be filed.

27 Accordingly,

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IT IS ORDERED that:

1. The Clerk of Court shall mail Plaintiffs two blank Applications to Proceed *In Forma Pauperis*.
2. Plaintiffs shall each file separate Applications to Proceed *In Forma Pauperis* on or before **April 25, 2011**.
3. If Plaintiff parents of Anthony Bottzeck wish to pursue a claim on his behalf, Plaintiffs must apply to have a Guardian *Ad Litem* appointed to appear on his behalf. A minor child may not appear without a Guardian *Ad Litem*.
4. If the Plaintiff parents wish to pursue a claim on Anthony Bottzeck's behalf, Plaintiffs shall file an amended complaint which restates the claims in the original complaint and adds any claim asserted on Anthony Bottzeck's behalf.
5. Failure to comply with this Order will result in a recommendation to the District Judge that this case be dismissed.

Dated this 5th day of April, 2011.



PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE